

MINUTES OF THE REGULAR CITY COUNCIL MEETING
TUESDAY- -NOVEMBER 15, 2011- -7:00 P.M.

Mayor Gilmore convened the meeting at 7:18 p.m. Councilmember deHaan led the Pledge of Allegiance.

ROLL CALL - Present: Councilmembers Bonta, deHaan, Johnson, Tam and Mayor Gilmore – 5.

Absent: None.

AGENDA CHANGES

None.

PROCLAMATIONS, SPECIAL ORDERS OF THE DAY & ANNOUNCEMENTS

(11-550) Presentation of Certificates of Appreciation to the Mayor's Fourth of July Parade Committee Members.

Mayor Gilmore thanked the committee members and presented them with certificates.

ORAL COMMUNICATIONS, NON-AGENDA

(11-551) Harriette Saunders, Paratransit Advisory Committee, encouraged people to direct paratransit issues to her.

(11-552) Al Wright, Alameda, requested that Council stop tree construction on Park Street during the holiday season and resume the work in January.

(11-553) Red Wetherill, Alameda, suggested adding a half cent to the sales tax as an alternative to [golf] land swap options.

(11-554) Ken Peterson, Alameda, discussed trees on Park Street.

(11-555) Gretchen Lipow, Alameda, stated that last week's tree meeting should have been structured like a Council meeting.

CONSENT CALENDAR

Councilmember Tam moved approval of the Consent Calendar.

Councilmember Johnson seconded the motion, which carried by unanimous voice vote – 5, with the exception of Vice Mayor Bonta recusing himself from voting on final passage of the Ordinance [paragraph no. 11-563]. [Items so enacted or adopted are indicated by an asterisk preceding the paragraph number.]

(*11-556) Minutes of the Special and Regular City Council Meetings Held on October 18, 2011; the Special City Council Meetings Held on October 25, 2011; and the Special City Council Meeting Held on October 27, 2011. Approved.

(*11-557) Ratified bills in the amount of \$3,420,996.46.

(*11-558) Recommendation to Accept the Quarterly Sales Tax Report for the Period Ending June 30, 2011. Accepted.

(*11-559) Recommendation to Accept the Treasury Report for the Quarter Ended September 30, 2011. Accepted.

(*11-560) Recommendation to Authorize the City Manager to Execute a Consulting Services Agreement with Public Financial Management Inc. (PFM). Accepted.

(*11-561) Recommendation to Appoint Deborah Wright to Existing Membership of America's Cup Ad Hoc Committee. Accepted.

(*11-562) Recommendation to Approve Reinstatement for Michael D'Orazi in Order to Recognize Prior Service with the City of Alameda. Accepted.

(*11-563) Ordinance No. 3037, "Authorizing the Execution of Lease of Real Property Located at 1525 Bay Street Between City, as Lessor, and Karen Zimmerman and Kenneth Edgerly, as Lessee, for Operation of ABC Preschool." Finally passed.

[Note: Vice Mayor Bonta recused himself from voting on the ordinance.]

REGULAR AGENDA ITEMS

(11-564) Recommendation to Approve Moving Forward with Surveys as the Next Step in the Boards and Commissions Evaluation Process.

The Senior Management Analyst gave a brief presentation.

Suggested changes to the surveys: John Knox White, Alameda.

Councilmember deHaan requested clarification of Survey Monkey.

The Senior Management Analyst stated Survey Monkey is an on-line survey tool; a paper version would be made available to Boards and Commissions through staff secretaries as an alternative.

Vice Mayor Bonta stated that Mr. Knox White's question [where work would go if a Board or Commission disbanded] should be added to the survey; the public input process should be expanded; holding subcommittee meetings should be added; open

ended questions are best.

Mayor Gilmore stated that she agrees with the idea of holding a public meeting; she is concerned with requesting public input via a computer; not everyone has computer access or is comfortable with using computers.

The Senior Management Analyst stated staff would continue to work with the subcommittee to refine approaches for obtaining information.

Councilmember Tam inquired what has been the response rate to past surveys.

The Deputy City Manager responded the website survey has been up for four weeks and has received approximately 175 responses; the tree survey went up this morning and has received 85 responses.

Councilmember Tam stated focus should be on outreach as well.

The Assistant City Manager stated Council has requested staff to work on a public participation policy; the policy would be brought back to Council by March.

Mayor Gilmore stated that she is in favor of doing the public survey but not with most of the questions; concurred with Vice Mayor Bonta regarding open ended questions.

Councilmember Tam moved approval of the staff recommendation, with amendment to survey questions and addition of holding a meeting to gain public input.

Councilmember Johnson seconded the motion, which carried by unanimous voice vote – 5.

(11-565) Resolution No.14635, “Approving the Update to the City of Alameda’s Local Hazard Mitigation Plan Annex, and Authorizing Its Inclusion in the Association of Bay Area Governments (ABAG) Report on Taming Natural Disasters.” Adopted.

Fire Captain Oliver gave a brief presentation.

Mayor Gilmore stated that a lot of time, energy, and thought went into the Plan.

Fire Captain Oliver stated that many departments provided input; the Plan would allow the City to be eligible for grant funding, particularly for Public Works and would offer eligibility for waiver of the 6.25% local match for public assistance money after a disaster.

Councilmember Tam stated the Soft Story Program is mentioned in the assessment and would provide a means for the City to be more proactive.

Councilmember deHaan moved adoption of the resolution.

Vice Mayor Bonta seconded the motion, which carried by unanimous voice vote – 5.

(11-566) Ordinance No. 3038, “Amending the City of Alameda Municipal Code by Repealing Section 24-5 (Smoking Control) of Section XXIV (Public Health) and By Adding Section 24-11, (Smoking Prohibitions in Places of Employment and Public Unenclosed Places), and Section 24-12 (Smoking Prohibitions in Multi-Use Housing).” Finally passed.

The Senior Management Analyst and City Attorney gave a brief presentation.

Vice Mayor Bonta moved approval of limiting speaker time to two minutes.

Councilmember Tam seconded the motion, which carried by unanimous voice vote – 5.

In favor of the ordinance: Luisa Vallejos, Alameda; Nancy Issel-Mayes, Alameda; Adrian Blakey, Alameda; Judith Frugé, Alameda (submittal); Serena Chen, American Lung Association and Alameda resident; Beth Hoch, Alameda; Janice Louie, Alameda Public Health Department and Alameda resident (submittal); Amy Raffle, Alameda.

Not in favor of the ordinance: Alan Teague, Alameda.

Expressed concern regarding tenant rights: Jake Thompson, Alameda.

Urged postponement: Linda Cazares, Woodstock Homes Corporation; Robb Ratto read comments on behalf of the Chamber of Commerce.

Urged revision to prohibit e-cigarettes: Suzaynn Schick, U.C. San Francisco; and Jonathan Krueger, Alameda (also urged prohibiting smoking at bar patios).

Urged revision to prohibit smoking in bar patios: Al Wright, Alameda (also urged amendment to permit smoking in residences with second units); Liz Williams, Americans for Nonsmokers’ Rights.

Urged revision to permit smoking in condominiums: Bryan Wilson, Alameda, (submittal); Phyllis Klein, Alameda; Lynne Burpee, Alameda; Li Volin, Alameda; and Margaret DosSantos, Alameda.

Urged revision to permit smoking in front of bars: Jon-Michael Freese, Alameda.

The Senior Management Analyst noted the ordinance needs to be modified to remove a reference to electronic cigarettes.

Mayor Gilmore requested clarification on the phasing of the ordinance.

The Senior Management Analyst stated most of the provisions would go into effect 30

days after adoption; property provisions would not go into effect until January, 2013.

Vice Mayor Bonta inquired how phasing has been determined.

The Assistant City Manager responded ordinances normally go into effect 30 days after final passage; staff wants to delay the housing provisions to provide transition time.

Vice Mayor Bonta inquired whether property owners have provided any input regarding phasing, to which the Senior Management Analyst responded in the negative.

Councilmember Johnson stated that she would prefer that the ordinance become effective sooner than 2013; she suspects that many tenants are on a month-to-month tenancy.

The Senior Management Analyst stated nine months has been the soonest other model ordinances have gone into effect.

Councilmember Johnson stated having the ordinance go into effect in 2013 is a long time for people to tolerate smoke in a building.

The Assistant City Manager stated people have not had an issue with the [effective] date.

Councilmember Tam stated other ordinances, such as the Styrofoam ordinance, have been phased in; inquired what could be done in terms of message market penetration if more time was given.

The Assistant City Manager responded public meetings were held for the Styrofoam ordinance; stated the ordinance did not go into effect until six months after final passage; an education process would be needed.

Councilmember deHaan stated electronic cigarettes and property owners with an additional unit need to be addressed.

The Assistant City Manager stated a property owner with an in-law unit would not be affected by the ordinance.

In response to Vice Mayor Bonta's inquiry, the Senior Management Analyst responded a multi-unit residence refers to both rental and common interest complexes, which are typically owner occupied.

Councilmember deHaan stated smoking is a way of life for many people coming from other countries; employees would be impacted by the ordinance.

Mayor Gilmore stated Council gave direction to research electronic cigarettes and how to regulate bar patios; Council could amend the ordinance to include the two items;

smoking residue collects on tables and chairs; inquired who would clean the tables and chairs; further inquired whether the City would be running afoul of its own law by allowing smoking because of workplace protection.

The Assistant City Manager responded many times, owners bus tables in order to protect employees; stated staff if trying to establish a strong ordinance, but the ordinance would not be perfect.

Mayor Gilmore inquired when staff would be coming back with research on electronic cigarettes and bar patios, to which the Assistant City Manager responded as soon as possible.

Mayor Gilmore inquired when staff would come back with outreach results for rental and condominium owners.

The Assistant City Manager responded a series of meetings would be held; stated staff would work with ECHO Housing; the Alameda Realtors Association provided a mailing list of property management companies.

Councilmember Tam inquired what has been Union City's enforcement experience.

The Senior Management Analyst responded enforcement has been complaint driven; stated Union City's ordinance is relatively new; Hayward's downtown area has been actively ticketed.

Vice Mayor Bonta requested clarification on the nuisance issue.

The Acting City Attorney stated the Municipal Code already has language that states that any violation of the Municipal Code is a nuisance; the ordinance would have a component for private enforcement.

Vice Mayor Bonta stated that he likes the idea of providing clauses in lease agreements at a future time; providing some model forms would be good so that a landlord would know that they would be complying with requirements of the ordinance.

The Acting City Attorney stated Richmond points to the California Apartments Association Form 34.

The Senior Management Analyst stated that she is aware of the form; the City does not have authorization to have the form in the ordinance; the form could be included in outreach material and posted on the website.

Vice Mayor Bonta inquired whether the City would not be able to replicate Richmond, to which the Senior Management Analyst responded a license is needed to use the form.

Vice Mayor Bonta stated that he likes the idea of providing certainty to landlords or

apartment owners; staff should seek permission or authorization [to reference the form] if possible; that he would like to make said amendment to the ordinance.

The Acting City Attorney stated that she does not see a problem with referencing the form.

Mayor Gilmore stated that she is concerned with the ordinance going into effect during the holidays; she would be in favor of the first of the year.

In response to Vice Mayor Bonta's inquiry, the City Manager stated there are many examples of federal statutes that provide for statutory damages because showing how the damage applies to a particular individual is difficult; the concept of the private attorney general is often included in consumer and other environmental type statutes and regulations when there is an acknowledgement that the government agency may not have the resources available to do the enforcement at legislature's desired level; the ordinance would be a low priority enforcement given all of the other issues on the table for the Police Department; applying a private attorney general method would encourage enforcement of the law; further stated showing personal damage is not necessary for some tortes.

The Acting City Attorney summarizes the suggested amendments: removing the clause: "WHEREAS, California law declares that anything which is injurious to health or obstructs the free use of property, as to interfere with comfortable enjoyment of life or property, is a nuisance" would be replaced with: "WHEREAS, Alameda Municipal Code Section 1- 5.43(a) provides that any condition existing in violation of this Code is deemed a public nuisance"; the last sentence of Section 24-11.1(v) [Smoking also includes the use of an e-cigarette which creates a vapor, in any manner or in any form, or the use of any oral smoking device for the purpose of circumventing the prohibition of smoking in this Section] would be removed; Section 24.12.2 [For the purpose within the City, nonconsensual exposure to secondhand smoke occurring on or drifting into any multi-unit residence is a nuisance] would be removed; Section 24-12.8(g) [Any violation of this Section 24-12 is hereby declared to be a nuisance] would be struck; a provision would be added regarding the California Apartment Association Form 34, which would read the same as the City of Richmond; and the enforcement date would be changed to January 2, 2012.

Vice Mayor Bonta stated electronic cigarettes, bar patios, and beaches would be brought back for further discussion; inquired whether electronic cigarettes and bar patio smoking would not be prohibited now, to which the Acting City Attorney responded in the affirmative.

Councilmember Johnson suggested beaches be included in the ordinance; beaches could be removed if it becomes clear that the City does not have jurisdiction.

The Acting City Attorney stated staff took a precursory look into the matter and does not see anything that would prevent enforcement [at beaches]; the matter could be

reviewed after additional research; suggested beaches be added to Section 24-11.1(s) [Recreational Areas].

Vice Mayor Bonta moved final passage of the ordinance with the amendments.

Councilmember Tam seconded the motion.

Under discussion, Councilmember Tam noted speakers addressing the harm and public health concerns regarding electronic cigarettes is compelling.

On the call for the question, the motion carried by unanimous voice vote – 5.

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Mayor Gilmore called a recess at 9:20 p.m. and reconvened the meeting at 9:31 p.m.

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CITY MANAGER COMMUNICATIONS

(11-567) The City Manager encouraged everyone to take the website and tree surveys; discussed public noticing and outreach; announced a November 17th Town Hall meeting.

ORAL COMMUNICATIONS, NON-AGENDA

(11-568) Former Councilmember Lil Arnerich, Alameda, announced two Alameda representatives would serve on the Alameda County Fair Board.

(11-569) Janet Gibson, Alameda, requested clarification on whether the Brown Act allows Councilmembers to attend non-noticed meetings [such as the Town Hall upcoming meeting].

The Acting City Attorney stated Council can attend any ceremonial event; however, if Councilmembers talk to each other regarding business within the subject matter jurisdiction, a notice would be needed.

Mayor Gilmore noted sometimes Councilmembers cannot attend meetings because of scheduling conflicts.

COUNCIL REFERRALS

(11-570) Direct Staff to Seek Alternative Options to the Golf Land Swap

Mayor Gilmore gave a brief presentation; stated the two minute rule would apply to speakers except for Mr. Van Winkle.

The City Manager clarified Mayor Gilmore's referral is to direct staff to seek alternative options to the property exchange that would still provide for the long-term financial

sustainability of the Chuck Corica Golf Complex.

Opposed to land swap: Joe Van Winkle, Alameda; Michael Robles Wong, Alameda; Mary Anderson, Alameda; Lee Paulsen, Alameda; Ann Moxley, Alameda; Marie Kane, Bay Isle Point Homeowners Association; James Manning, Alameda; Norma Arnerich, Alameda; former Councilmember Lil Arnerich, Alameda; Ken Peterson, Alameda; Jane Sullwold, Alameda; Robert Sullwold, Alameda; Sean Todaro, Alameda; Nadine Levine, Alameda; and Nancy Hird, Alameda.

Urged any alternative consider youth sports: Pat Bail, Alameda Youth Sports Coalition.

Mayor Gilmore stated that her intent was to ask Council whether they would be willing to direct staff to look at alternatives to the land swap, to which Councilmember Tam and Councilmember Johnson replied in the affirmative.

The City Manager stated the swap options include: 1) have the City develop the North Loop property for sports; or 2) have staff talk with Ms. Bail and Sports Coalition members regarding the option of having the City do the swap and having the Sports Coalition develop North Loop Road as part of a broader agreement; the non- swap options are: 1) have the City continue to run the Course and come up with a different financing option to fund necessary improvements; 2) have a non-profit run the Course altogether; or 3) have the City continue to be in charge while using an operator; the City would continue to operate the 36-holes and a non-profit would operate the Mif Albright Course; requested that Council give staff until January 24th to review alternatives.

Councilmember Johnson moved approval of directing staff to look at alternatives and return back to Council on January 24th.

Vice Mayor Bonta seconded the motion.

Councilmember deHaan inquired whether the Acting City Attorney is ready to provide some feed back on Article 22 [of the City Charter] and supermajority vote.

Mayor Gilmore responded said discussion might be more appropriate when alternatives come back.

Councilmember deHaan stated on April 5, 2011, Ron Cowan wrote that the City of Alameda is legally obligated to honor the Harbor Bay Development Agreement for 3,200 homes; that he believes the statement is contrary to the settlement agreement; a legal settlement provided for an opportunity to build 227 homes; when the Request for Proposals (RFP) went out, KemperSports was not the leader; KemperSports defaulted back in April when they said they were going to provide \$5 million of their own funding; the City subsequently found out that KemperSports was banking on the City to bond it [\$5 million]; at that point, KemperSports was in default of the negotiating agreement; the City should be going out with another modified RFP; the proposal should be for two 18-holes and a 9-hole short course; accurate facts should be provided on the website.

The City Manager stated information on the website addresses operating theories; people can have different options; facts on the website are not incorrect.

On the call for the question, the motion carried by the following voice vote: Ayes: Councilmembers Bonta, Johnson, Tam, and Mayor Gilmore – 4. Present not voting: Councilmember deHaan – 1.

Vice Mayor Bonta stated looking at all options is a good idea; options should not be limited.

COUNCIL COMMUNICATIONS

(11-571) Councilmember Tam announced that she attended a Waste Management Authority and East Bay League of California Cities meeting last week.

(11-572) Vice Mayor Bonta invited everyone to attend a Town Hall Meeting this Thursday from 6:00 p.m. to 8:00 p.m. at the Boys and Girls Club.

ADJOURNMENT

There being no further business, Mayor Gilmore adjourned the meeting at 10:44 p.m.

Respectfully submitted,

Lara Weisiger
City Clerk

The agenda for this meeting was posted in accordance with the Brown Act.